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June 29, 2023

VIA ECF

Honorable Kenneth M. Karas
United States District Judge
Hon. Charles L. Brieant Jr.
Federal Building and Courthouse
300 Quarropas Street, Room 521
White Plain, NY 10601

Re: J. Mark Lane et al., v. Nigrelli, et al.
22 Civ. 10989 (KMK)

Your Honor:

I am a Senior Assistant County Attorney in the Litigation Bureau of the Westchester County Attorney's Office, and the attorney assigned to the defense of the above-referenced matter on behalf District Attorney Miriam Rocah ("D.A. Rocah"). We write to inform the Court of the Second Circuit's decision in Vitagliano v. County of Westchester, No. 23-30, ___F.4th___, 2023 U.S. App. LEXIS 15469 (June 21, 2023). This decision was issued days after D.A. Rocah filed her reply in support of her motion to dismiss the Complaint and directly impacts our arguments with respect to Plaintiffs' standing to bring the instant suit.

Specifically, the Second Circuit held that while evidence of past enforcement is relevant to determine whether there is a threat of prosecution, it is not necessary to make out injury in fact. Id. at *22. To the extent that D.A. Rocah argued the same in her moving papers, D.A. Rocah withdraws that argument. However, the plaintiff's intention to engage in the proscribed conduct in Vitagliano, was far more concrete than the some-day aspirations of the Plaintiffs in the instant matter to own assault weapons. In Vitagliano, the plaintiff had undergone training to engage in the proscribed conduct, articulated such training in the complaint and provided an exact location of where she intended to engage in such conduct but for the challenged statute. Id. at *17. Most importantly, the challenged statute had been enacted just three months before she filed suit, previously the proscribed conduct was not illegal. Id. at *20.



As D.A. Rocah argued in the Motion to Dismiss and Reply, the Plaintiffs have not established anything more than a some-day intention to possess assault weapons. At the time this Complaint was filed, neither Plaintiff was licensed or trained to own the assault weapons they desire and the law banning these firearms had been in effect for approximately 10 years. Additionally, this statute has already been found constitutional. See generally N.Y. State Rifle & Pistol Ass'n v. Cuomo, 804 F.3d 242 (2d Cir. 2015) *cert denied* Shew v. Malloy, 2016 U.S. LEXIS 3959 (U.S. June 20, 2016).

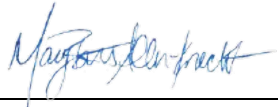
DA Rocah thanks the Court for its time and consideration herein.

Respectfully submitted,

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